



April 23, 2002

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2002-2057

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162030.

The Southlake Police Department (the "department"), which you represent, received a request for suicide reports made by investigating officers in 2001, and statistics on the number of attempted and successful suicides in the area. As responsive to this request you have submitted information concerning three attempted suicides. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. As you make no reference to the request for statistics, we assume that you have released the statistics to the extent that they exist. If the department has no such statistics, the Public Information does not require the department to compile them or to create a new document in response to this request. *See* Open Records Decision No. 452 (1986). We have considered the exceptions you claim and reviewed the submitted information.

You assert that some of the submitted information is confidential because it "contain[s] references to communications and records that are subject to section 773.091" of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality statutes such as section 773.091 of the Health and Safety Code, which makes confidential certain information in records created by emergency medical services personnel or physicians or maintained by an emergency medical services provider. Health & Safety Code § 773.091. Having reviewed the submitted documents, we find that none of the submitted information constitutes emergency medical records, nor does it come directly from such records. Section 773.091 does not make confidential mere references to emergency medical records. *See id.*, Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Therefore, no information may be withheld under

section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 also incorporates the doctrine of common law privacy. For information to be protected from public disclosure under common law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). In *Industrial Foundation*, the Texas Supreme Court specifically held that information that relates to attempted suicide is excepted from public disclosure pursuant to the statutory predecessor to section 552.101 of the Government Code in conjunction with common law privacy. *Id.* at 683.

In this instance, we conclude there is no legitimate public interest in the identities of the individuals who allegedly attempted to commit suicide. *See id.*; *see also* Open Records Decision Nos. 422 (1984), 396 (1983). Accordingly, we have marked the information that the department must withhold in order to protect the identities of those individuals. The remaining submitted information is not protected by common law privacy and therefore must be released to the requestor.

In summary, the department must withhold the information that we have marked as tending to identify the individuals who attempted to commit suicide. All other submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

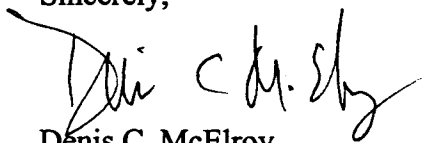
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 162030

Enc. Marked documents

c: Mr. Mike Halligan
Texas Mental Health Consumers
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(w/o enclosures)